

§ 1955.34

was issued be taken as established adversely to the party;

(3) Rule that the party may not introduce into evidence or otherwise rely, in support of any claim or defense, upon testimony by such party, officer or agent, or the documents or other evidence;

(4) Rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(5) Rule that a pleading, or part of a pleading, on a motion or other submission by the party, concerning which the order or subpoena was issued, be stricken or that decision on the pleading be rendered against the party, or both.

(b) Any such action may be taken by written or oral order issued in the course of the proceeding or by inclusion in the initial decision of the administrative law judge or an order or opinion of the Secretary. The parties may seek, and the administrative law judge may grant, such of the foregoing means of relief or other appropriate relief as may be sufficient to compensate for the lack of withheld testimony, documents, or other evidence.

§ 1955.34 Fees of witnesses.

Witnesses, including witnesses for depositions, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

Subpart E—Hearing and Decision

§ 1955.40 Hearings.

(a)(1) Except as may be ordered otherwise by the administrative law judge, the Department of Labor shall proceed first at the hearing.

(2) The Department of Labor shall have the burden of proof to sustain the contentions alleged in the notice of proposed withdrawal, published under § 1955.10(b)(1) but the proponent of any factual proposition shall be required to

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sustain the burden of proof with respect thereto.

(b)(1) A party shall be entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received, but the administrative law judge shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(2) The testimony of a witness shall be upon oath or affirmation administered by the administrative law judge.

(3) If a party objects to the admission or rejection of any evidence, or to the limitation of the scope of any examination or cross-examination, or to the failure to limit such scope, he shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made before the administrative law judge may be relied upon subsequently in the proceeding.

(4) Formal exception to an adverse ruling is not required.

(c) Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice, or concerning which the Department of Labor by reason of its functions is presumed to be expert: Provided, that the parties shall be given adequate notice, at the hearing or by reference in the administrative law judge's and the Secretary's decision of the matters so noticed and shall be given adequate opportunity to show the contrary.

(d) When an objection to a question propounded to a witness is sustained, the examining party may make a specific offer of proof of what the party expects to prove by the answer of the witness orally or in writing. Written offers of proof, adequately marked for identification, shall be retained in the record so as to be available for consideration by any reviewing authority.

(e) Hearings shall be stenographically reported. Copies of the transcript may be obtained by the parties and the public upon payment of the actual cost of duplication to the Department of

Labor in accordance with 29 CFR 70.62(c).

(f) Corrections of the official transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. Corrections may be ordered by the administrative law judge or agreed to in a written stipulation by all parties or their representatives. Where the parties are in disagreement, the administrative law judge shall determine the corrections to be made and so order. Corrections may be interlineated in the official transcript so as not to obliterate the original text.

§ 1955.41 Decision of the administrative law judge.

(a) Within 30 days after receipt of notice that the transcript of the testimony has been filed with the administrative law judge, or such additional time as the administrative law judge may allow, each party may file with the administrative law judge proposed findings of fact, conclusions of law, and rules or orders, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all other parties and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b)(1) Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and rules or orders, the administrative law judge shall make and serve upon each party his initial decision which shall become final upon the 30th day after service thereof unless exceptions are filed thereto.

(2) The decision of the administrative law judge shall be based solely upon substantial evidence on the record as a whole and shall state all facts officially noticed and relied upon. The decision of the administrative law judge shall include:

(i) A statement of the findings of fact and conclusions of law, with reasons and bases therefor upon each material issue of fact, law, or discretion presented on the record;

(ii) Reference to any material fact based on official notice; and

(iii) The appropriate rule, order, relief, or denial thereof.

§ 1955.42 Exceptions.

(a) Within 30 days after service of the decision of the administrative law judge, any party may file with the Secretary written exceptions thereto with supporting reasons. Such exceptions shall refer to the specific findings of fact, conclusions of law, or terms of the rule or order excepted to; and shall suggest corrected findings of fact, conclusions of law, or terms of the rule or order referencing the specific pages of the transcript relevant to the suggestions. Requests for extension of time to file exceptions may be granted if the requests are received by the Secretary no later than 25 days after service of the decision.

(b) If any timely exceptions are filed, the Secretary may set a time for filing any response to the exceptions with supporting reasons. All exceptions and responses thereto shall be served on all the parties.

§ 1955.43 Transmission of the record.

If exceptions are filed, the Secretary shall request the administrative law judge to transmit the record of the proceeding to the Secretary for review. The record shall include the State plan; a copy of the Assistant Secretary's notice of proposed withdrawal; the State's statement of items in contention; the notice of the hearing if any; any motions and requests filed in written form and rulings thereon; the transcript of the testimony taken at the hearing, together with any documents or papers filed in connection with the preliminary conference and the hearing itself; such proposed findings of fact, conclusions of law, rules or orders, and supporting reasons as may have been filed; the administrative law judge's decision; and such exceptions, responses, and briefs in support thereof as may have been filed in the proceedings.

§ 1955.44 Final decision.

(a) After review of any exceptions, together with the record references and authorities cited in support thereof, the Secretary shall issue a final decision ruling upon each exception and objection filed. The final decision may affirm, modify, or set aside in whole or in part the findings, conclusions, and the